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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Office of General Counsel

17 May 1985

(b)(3)

The Honorable Mark S. Fowler
Chairman, Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Fowler:

Re: In The Matter Of: Complaint of Central Intelligence
Agency v. American Broadcasting Company

This is in response to the National Association of Broadcasters' ("NAB") opposition to our amended complaint and petition for reconsideration in the subject matter and to supplement facts previously provided to the Commission. On 9 April 1985, NAB submitted an opposition to the CIA's complaint and argued that the CIA has no standing to file a complaint with the Federal Communications Commission ("FCC") under any of the Commission's regulations or doctrines. In effect, the NAB and others urge that the message be ignored in light of the identity of the messenger.

The arguments of the NAB, of which ABC is a member, present no basis for overturning the 10 January 1985 holding of the Commission's staff. Our complaint against ABC is a serious one which seeks Commission intervention and redress based upon the fairness doctrine, the rule against deliberate news distortion, and the Commission's plenary regulatory authority over broadcasters. We submit that we have made an overwhelming case for appropriate redress; moreover, our position has been recently confirmed by the investigative report issued by the Los Angeles Times on 5 May 1985. ^{1/} According to that report, the Times inquiry "found little to substantiate the network's charges against the CIA and raised questions about ABC's sources and news-gathering practices in the Rewald story." Among other things, the Times found that:

^{1/} See "Adventures In Paradise," David Crook, Los Angeles Times (Calendar Section), 5 May 1985, at 4-8, a copy of which is enclosed.

". . . public records -- including Bishop, Baldwin bankruptcy proceedings, financial records and court documents in more than a dozen civil and criminal cases, published books and other materials -- show no independent evidence of major CIA involvement with Rewald."

"Five of ABC's seven on-air interviews were with individuals who are plaintiffs or attorneys with lawsuits against the CIA. ABC admitted on the air that the sixth person's story could not be substantiated. And the network's seventh interview subject says the network misrepresented his position."

"On air, ABC offered no independent substantiation for its charges." 2/

"Subsequent to the broadcasts, the network defended its investigative reporting on the grounds that the CIA does not adequately answer reporters' questions. The CIA argued, however, that its position was represented in the public records of the case." 3/

2/ The Times noted that ABC's sole reliance on unverified first-person interviews was criticized by Ned Schurnam, producer of public television's former press-watchdog series "Inside Story."

'They were relying on first-person interviews. I didn't see them supported by any real serious documentation There wasn't anything beyond that patina -- that surface of personal identification -- that really supported this story, other than Rewald, his friends, the injured parties, those people who stood to benefit from this story surfacing.'

3/ According to the Times, a senior ABC News official defends ABC's conduct by alleging that the CIA does not have a "workable press relations department, an office that deals with an inquisitive press" In essence, he disclaims any necessity for background work, assimilation of documentation, or verification if it doesn't receive an expected level of cooperation. His view seems to be that if an interviewee chooses not to discuss the matter, the permissible negative inferences are unlimited and the requirement for corroboration eliminated.

The Times investigative report also discloses that two of the persons interviewed in the ABC broadcasts which led to our complaint were quite critical of the ABC story and how it portrayed ABC's interviews of them. One was Thomas Hayes, the federal bankruptcy administrator handling the Rewald matter.

'I was shocked when I saw ABC News It scared the hell out of me because there's a story I know the background of. The average citizen looks at the national news and there's an imprimatur of credibility They sound almost like God--like everything they say is the absolute truth. When you see this kind of pure garbage that came out in that (ABC) report it scares the living hell out of you. It did to me.'

Ted Frigard, one of the two persons ABC used to support its claims of CIA involvement in assassination plots, casts doubt on the forthrightness of ABC's presentation of his remarks. According to the Times,

He [Frigard] . . . said that he made the \$350,000 offer to the CIA and that the death threat was only a warning from a government-employed friend. Frigard refuses to identify his friend, but claims that he is a high-ranking intelligence community official.

'I never thought he was with the CIA,' Frigard said.

Because of the above statements, it obviously is important to review the outtakes and any related documentation of ABC's interviews with these individuals. Those outtakes might provide some clue as to the discrepancies between the interviews given to the Times and those portions of the on-the-air interviews portrayed by ABC in its broadcast.

There are other disturbing questions raised by the Times report. The use of a so-called "news broker" is a concept that is fraught with potential problems. From the Times report, we learn for the first time that a good portion of the information contained in the ABC investigative report, and perhaps its impetus, emanated from a news broker who received his information from Rewald's brother-in-law. Indeed, it is interesting that in the ABC report the news broker, who is the editor of Counterspy, was not acknowledged for his participation in the preparation of the report, even though he provided massive amounts of material and, according to the Times report, was hired by ABC as a "consultant/reporter" on

the story. 4/ While other networks may have utilized this "broker's" information, only ABC did not identify him and instead substituted the imprimatur of "ABC has learned" when, in fact, ABC had not.

We submit that ABC's purported corroboration and adoption of the story in issue as its own -- without undertaking any independent verification -- is a separate and clear incident of deliberate news distortion. In such circumstances, it is not solely that the broadcaster deliberately distorted the content of the news story, but also that it deliberately and knowingly distorted the corroboration and verification.

We thus submit that the Times report provides additional extrinsic documentation for our complaint. We would also urge that, because of the serious deficiencies in ABC's investigative methods and the use of an undisclosed, not-entirely impartial news broker, as demonstrated by the Times report, the FCC should take cognizance of this matter under its general oversight powers. It seems clear that an overwhelming case has been made for compelling ABC to respond to our complaint. Indeed, a recent Times editorial 5/ commenting on its detailed investigative report makes these telling points about ABC's program:

4/ Counterspy in prior years was actively engaged in publishing the names of covert CIA officers assigned overseas and was one of the catalysts for passage of the Intelligence Identities Protection Act. In this regard, the remarks of Representative Boland, made during the course of hearings on the Act, are noteworthy:

... the whole intent and purpose of those of Counterspy, the Covert Action Information Bulletin, their purpose and intent is to destroy the intelligence operations of the United States. They have said so. That is their credo. And that is what they are bent on doing, and that is the reason they are in business.

Hearings Before The Subcommittee on Legislation of the Permanent Select Committee on Intelligence, 97th Cong., 1st Sess. 26 (1981) (statement of Representative Boland).

5/ See "Government As Truth Fairy" (Editorial), Los Angeles Times, 8 May 1985, at II.4, a copy of which is enclosed.

. . . the basis for the ABC story was flimsy at best. It was not adequately checked, and it lacked independent confirmation. The network subsequently retracted the charge about the plot to kill Rewald, but it stands by the rest of the story.

* * *

ABC appears to have aired a story that was wrong. It was not alone. British Broadcasting Corp., the Wall Street Journal and CBS News, to a greater or lesser extent, had earlier published or broadcast accounts of Rewald and the CIA connection, though none went as far as ABC did. ABC got out the hypodermic needle and pumped this story up--not the first time in the history of journalism (nor, alas, probably not the last) that reporters refused to let facts get in the way of a good yarn.

But under no circumstances should the government be involved in investigating the accuracy of a broadcast. Down that road lies government-imposed Truth, which is much more dangerous than a story that is wrong. However, the CIA, like everyone else, is entitled to fair, accurate and responsible journalism, and there is a way to set things right.

ABC would be doing itself, its viewers, all broadcasters and all journalists a service by conducting its own investigation of what went wrong in the Rewald story and making the results public.

It is difficult to understand how ABC can continue to maintain its position that it stands by the accuracy of its original broadcast when faced with the overwhelming case that has been made against it, not only by the information contained in our amended complaint, but also by the meticulously prepared Times investigative report. We again request an opportunity to appear before the Commission in order to demonstrate how important it is for ABC to take appropriate remedial steps, including the ones suggested by the Times, namely, the conduct of an internal investigation in order to determine what went wrong in the production of the Rewald story and the public disclosure of the results of that investigation.

Sincerely,

Associate General Counsel

Enclosures

Certificate of Service

I, an attorney admitted to practice before the bars of the District of Columbia and the Commonwealth of Virginia, do hereby certify, pursuant to 47 CFR §§1.47 and 1.51(c)(2), that the original and 4 copies of the foregoing "Supplemental Filing of CIA and Opposition of CIA To American Civil Liberties Union Petition For Declaratory Ruling" have been filed with the Federal Communications Commission and that one copy each has been served on the following counsel for party defendant ABC:

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and that informational copies have been provided to:

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Dated: ²¹~~20~~ May 1985

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